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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JASON ROSE,

Defendant and Appellant.

D074188

(Super. Ct. No. SCE374316)

APPEAL from a judgment of the Superior Court of San Diego County, Patricia K. Cookson, Judge. Affirmed.

Helen S. Irza, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Jason Rose's appointed appellate counsel has filed a brief asking this court to independently review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In September 2017, deputies with the San Diego County Sherriff's Department were patrolling a river bottom area in Lakeside where homeless people were known to camp. The deputies came to a clearing with a tarp hanging from some trees and a tent positioned behind the tarp. The deputies saw a man sitting outside the tent. One of the deputies, Steven Cagigas, called "come on out," then walked past the tarp where he encountered three people, including a man he recognized from earlier patrols of the area. The deputies detained the three people, and Cagigas walked towards the tent to make sure no one else was inside. The tent was open and Cagigas saw in clear view two weapons (later determined to be BB guns) and two glass pipes that he recognized as the kind used to smoke methamphetamine.

Cagigas asked the three people if they owned the tent. All three denied the tent was theirs. Cagigas then searched the tent and found a digital scale, "hundreds" of small Ziploc bags, and over 38 grams of methamphetamine. The deputies arrested one of the men present, who was later charged with possession of a controlled substance with the intent to sell under Health and Safety Code section 11378. At the preliminary hearing of that defendant, Rose appeared as a witness for the defendant. Before testifying, Rose was provided with counsel, who advised Rose of his Fifth Amendment right against self-incrimination. Over his counsel's advice, Rose told the court the tent and the contraband were his, not the defendant's.

The charges against the defendant were dropped and the District Attorney amended the initial complaint to charge Rose with the same crime. Shortly after, Rose

filed a motion to suppress the evidence obtained by the sheriff's deputies when Cagigas searched the tent, which the prosecutor opposed. At the preliminary hearing, Cagigas gave his account of the arrest of the initial defendant and his search of Rose's tent. Another deputy provided an expert opinion that the methamphetamine seized by Cagigas was possessed for the purpose of sale, based on the large quantity of methamphetamine, amounting to several hundred individual doses, and the presence of the plastic bags and the scale. At the conclusion of the hearing, the trial court denied Rose's motion to suppress.

Before trial, Rose renewed his motion to suppress and the prosecution again opposed the motion. After a hearing, the court denied the renewed motion, finding that Rose did not have a reasonable expectation of privacy in the tent. After a hearing under *People v. Marsden* (1970) 2 Cal.3d 118, the case was tried by a jury over two and one-half days. Rose took the stand in his own defense. He testified he purchased the methamphetamine for personal use and had no intention to sell it. The jury did not find Rose's testimony credible and convicted him of the charged offense.

Rose brought a motion to reduce the felony conviction to a misdemeanor, which the prosecution opposed. At the sentencing hearing, the court denied Rose's motion but indicated it would consider probation for Rose's sentence. Rose, however, declined probation, and the court sentenced him to the low term of 16 months in local custody. The court also awarded Rose 236 days of presentence custody credit, consisting of 118 actual days and 118 days of good conduct credit. The court imposed various fines and fees, including a \$450 restitution fine under Penal Code section 1202.4, but stayed the

finest and fees after finding Rose was transient and did not have the ability to pay. Rose timely appealed.

DISCUSSION

As indicated, appointed appellate counsel filed a brief pursuant to *Wende, supra*, 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 (*Anders*) summarizing the proceedings below and indicating she could not find any reasonably arguable issues for reversal or modification of the judgment on appeal. We granted Rose permission to file a brief on his own behalf. He has not responded. Our review of the record as mandated by *Wende* and *Anders* disclosed no reasonably arguable appellate issues. Competent counsel represented Rose on this appeal.

DISPOSITION

The judgment is affirmed.

McCONNELL, P. J.

WE CONCUR:

HUFFMAN, J.

DATO, J.